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Supreme Court of the United States.

OCTOBER TERM, 1952.

No. 340.

WILLIAM B. FOWLER,
Appellant,

v.

STATE OF RHODE ISLAND,
Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

This appeal by the said William B. Fowler is on a decision of the Supreme Court for the State of Rhode Island entered August 12, 1952, overruling the defendant's exception and affirming the decision and conviction of the Superior Court for the said State of Rhode Island.

Opinions Below.

Two opinions were written by the Court below in this case. The first opinion answered certified questions, holding that the ordinance in question was valid. 83 A. 2d 67.

This opinion appears in the record (R. 43-56). The second opinion gave the reasons for the affirmance of the conviction entered following the return of the answers to the certified questions. This opinion is reported at 91 A. 2d 27. It also appears in the record (R. 1-10).

Jurisdiction.

On August 22, 1952, the appellee and the appellant stipulated that a substantial federal question is involved that ought to be determined by the Supreme Court of the United States. The appellee did not, however, agree that the ordinance is invalid, either on its face or as construed and applied, it being understood that it will contend before the Supreme Court of the United States that the ordinance is, in all things, constitutional upon its face and as enforced against the appellant.

The judgment of the Supreme Court of Rhode Island affirming the judgment of the Superior Court was entered August 12, 1952 (R. 9). The judgment became final on August 12, 1952 (R. 9). The petition for appeal to this Court was allowed within ninety days after the judgment became final (R. 56). The appeal to this Court was timely allowed (R. 58). Probable jurisdiction was noted by this Court on November 10, 1952 (R. 62).

This case presents a state of facts within the jurisdiction of this Court by virtue of 28 U.S.C., Sup. II (1946 edition), sec. 1257, where an appeal may be taken in any case when there is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution . . . of the United States, and the decision is in favor of its validity. Also note Act of Congress of January 31, 1928, c. 14, 45 Stat. 54, and Act of Congress of April 26, 1928 c. 440, 45 Stat. 466.

Question Presented.

Does the ordinance in question, which reads that—

> "No person shall address any political or religious meeting in any public park; but this section shall not be construed to prohibit any political or religious club or society from visiting any public park in a body, provided that no public address shall be made under the auspices of such club or society in such park"—

violate the Federal Constitution in that it abridges the right of freedom of assembly, freedom of speech and freedom of worship, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States?

The question was raised by motions to quash and dismiss filed in the Superior Court of Rhode Island (R. 10, 12, 21, 40). This question was answered in the negative by the Superior Court and by the Supreme Court of Rhode Island (R. 12, 21, 41).

Statute Involved.

This case draws into question the validity of one of sixteen sections of an ordinance of the City of Pawtucket, approved April 17, 1916, c. 149, which particular section, being section 11, provides as follows:

> "Sec. 11. No person shall address any political or religious meeting in any public park; but this section shall not be construed to prohibit any political or religious club or society from visiting any public park in a body, provided that no public address shall be made under the auspices of such club or society in such park."

The entire ordinance was received in evidence as an exhibit (R. 14). It is printed in the record (R. 54-56).

Constitutional Provisions Involved.

The First Amendment, relied upon in this case, reads as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The pertinent parts of the Fourteenth Amendment which appellant relies upon read as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of Case.

On September 3, 1950, William B. Fowler, defendant, was charged by complaint and warrant, among other things, as follows:

> "On the 3rd day of September A. D. 1950, with force and arms, William B. Fowler, alias John Doe, laborer, of said Pawtucket, did violate Section 11 of Chapter 149 of the ordinance of the City of Pawtucket in that

he did address a religious meeting in a public park, to wit, Slater Park against an Ordinance of the City of Pawtucket, and against the statute and the peace and dignity of the State."

After a trial in the District Court of the Tenth Judicial District at Pawtucket, Rhode Island, the defendant was convicted and sentenced to pay a fine of $5 and costs. The defendant duly appealed to the Superior Court for the Counties of Providence and Bristol, Rhode Island (R. 13).

On January 10, 1951, the said Superior Court certified the constitutional questions involved on the appeal to the Supreme Court for the State of Rhode Island (R. 1, 43-57). On August 10, 1951, in a judgment rendered by a divided Court, the certified questions were answered in the negative. There were dissents of two judges of the Court. The questions certified to the said Supreme Court for the State of Rhode Island were as follows:

"Is Section 11 of Chapter 149 of the ordinances of the City of Pawtucket, approved April 17, 1916, on its face and as construed and applied, unconstitutional because it abridges the rights of the defendant to Freedom of Speech, Freedom of Association, and Freedom of Worship, contrary to the First and Fourteenth Amendments to the United States Constitution?

"Is Section 11 of Chapter 149 of the ordinances of the City of Pawtucket, approved April 17, 1916, contrary to the provisions of Article I of the Constitution of the State of Rhode Island, with particular reference to Sections 3, 10 and 21?"

Following the return of the papers to the Superior Court the case was tried on October 22, 1951, before Mr.

Justice Andrews of the Superior Court of the State of Rhode Island, without a jury, which was specifically waived (R. 12-13).

Before making his plea the defendant made a motion to quash, orally and in writing. The pertinent parts of the motion to quash read:

> "(1) Section 11 of Chapter 149 of the Ordinances of the City of Pawtucket, approved April 17, 1916, on its face and as construed and applied, is unconstitutional because it abridges the rights of the defendant to freedom of speech, freedom of assembly and freedom of worship contrary to the provisions of the First and Fourteenth Amendments to the Constitution of the United States.
>
> "(2) That Section 11 of Chapter 149 of the Ordinances of the City of Pawtucket, approved April 17, 1916, is, on its face and as construed and applied, unconstitutional because it abridges the right of the defendant to freedom of speech, freedom of assembly and freedom of worship, contrary to the provisions of Article I, Sections 3, 10 and 21 of the Constitution of the State of Rhode Island."

The identical grounds were urged in motions to quash and for a judgment of acquittal made at the end of the State's case and at the close of all the evidence and before the decision of the Court, which were denied with exceptions (R. 21, 40, 41).

On October 22, 1951, the Court rendered a judgment convicting the appellant, who was then fined $5 (R. 41).

Each holding of the trial Court was presented on appeal to the Supreme Court of Rhode Island and assigned as error (R. 1, 2, 3, 9). Each federal question presented on this appeal was overruled by the Supreme Court of Rhode

Island (R. 9). A judgment of affirmance was entered (R. 9).

Facts.

It was stipulated and agreed that chapter 149 of the Ordinances of the City of Pawtucket, approved April 17, 1916, provides as follows:

> "Sec. 11. No person shall address any political or religious meeting in any public park; but this section shall not be construed to prohibit any political or religious club or society from visiting any public park in a body, provided that no public address shall be made under the auspices of such club or society in such park."

It was stipulated that Slater Park does have an area of approximately 194 acres; that within the above area are located tennis courts, merry-go-round, bandstand, a lake with rental boats, a baseball field, swings and dandles for children, sixteen fireplaces, animal and bird compounds, extensive formal gardens, natural woodlands and improved roads.

The parties further stipulated that there was sufficient space in the park for assemblies. It was *not* stipulated that assemblies can be held without interfering with other activities (R. 14).

The defendant is a resident of Arlington, Massachusetts, and is a minister of the group known as Jehovah's Witnesses, duly ordained. He acts under the direction of the Watchtower Bible and Tract Society of Brooklyn, the legal governing body of Jehovah's Witnesses (R. 26). He was invited by the Pawtucket company of Jehovah's Witnesses to deliver a Bible discourse, as a visiting minister, to an

assembly in Slater Park in Pawtucket (R. 27). He accepted the invitation and came to the park in Pawtucket, Rhode Island (R. 27).

On September 3, 1950, at 4.05 p.m., in a prominent section of Slater Park, a large group of people, numbering some four hundred persons, gathered for a religious meeting as previously advertised; the defendant Fowler addressed this meeting, using as aids a Bible and notes from a loose-leaf book. The subject was "Pathway to Peace," prepared in part from Scripture. He spoke into a microphone which connected with two loudspeakers; the Pawtucket Police under the supervision of Chief Inspector Vincent A. Hourigan, after listening for a few minutes, arrested the defendant Fowler and charged him with violation of the said ordinance (R. 29, 30, 31).

Jehovah's Witnesses have a regular meeting place in the City of Pawtucket which was not used the day in question (R. 39).

Summary of Argument.

The case at bar is governed by *Davis* v. *Massachusetts*, 167 U.S. 43. The ordinance in question does not interfere with freedom of assembly or speech or prohibit religious worship, but is for the sole purpose of guarding the park from being used for activities that could lead to disorder. The said case of *Davis* v. *Massachusetts*, 167 U.S. 43, has never been overruled, but on the contrary has "always been distinguished without intending to overrule it; and that it still is applicable law in the type of case where the question involves only the defendant's right, as a member of the public, to speak in a manner and under conditions which would violate the equal and correlative rights of other members of the public to a reasonable use of the park for its dedicated purposes" (R. 7). The ordinance is merely a police

regulation with valid regulations that are not discriminatory.

As to the defendant's argument that a religious address may be permitted in a public park without contravening the concept of separation of church and state, it is respectfully submitted that contention is superfluous. The State of Rhode Island readily states that there is nothing in the ordinance which prohibits religious services of any kind from being held in the public parks of the City. There is nothing which prohibits or restricts any individual from offering prayer. It is only an address on such an occasion that is prohibited by the ordinance in question. It is respectfully submitted, therefore, that this Honorable Court is not called upon to decide this constitutional point as briefed by the defendant.

"True liberty cannot exist without public order. In safeguarding our liberties we cannot go to the extreme of making impossible or unduly difficult public order.

Point Made.

The ordinance is constitutional because, both on its face and as construed and applied, it does not abridge the rights of freedom of assembly, freedom of speech and freedom of worship, contrary to the First and Fourteenth Amendments to the United States Constitution; it is a general measure and promotes public comfort and convenience in the use of the park and is a regulation in the interest of all and not a prohibition of freedom of speech, assembly and worship.

Argument.

The State of Rhode Island feels in presenting its argument that it should at the very outset analyze certain of

the more important cases cited by the defendant, as in all of these cases a fundamental premise exists which distinguishes them from the one before this Honorable Court.

Jamison v. *Texas*, 318 U.S. 413: In this case the ordinance made it unlawful "to scatter or throw any handbills, circulars, cards, newspapers or any advertising device of any description, along or upon any street or sidewalk in the City of Dallas." Nothing in that ordinance purported to make it unlawful *to distribute* religious pamphlets, and yet the gravamen of the complaint there, as viewed from the evidence, was directed solely to the defendant's distribution of religious treatises. Moreover, the ordinance in *Jamison* v. *Texas, supra*, differs still further from the one in the instant case in that the ordinance here expressly recognizes the right of religious groups to assemble and nowhere makes it unlawful to distribute religious pamphlets or to hold religious meetings and services (R. 4, 5).

Saia v. *New York*, 334 U.S. 558: Permission had to be obtained from the Chief of Police to use a hand speaker and no standards were prescribed for the exercise of his discretion. As far as this case is concerned the ordinance prohibited the use of the word "loudspeaker" device which casts its sound directly upon streets and public places. A public park was only incidentally involved because the defendant set up his "loudspeaker" in such a place. He was arrested for using a "loudspeaker" in defiance of the ordinance, not for making a public address in the park. The ordinance in question apparently was not invoked by the City to prohibit public addresses to a religious meeting in the park. The Court in its decision held that the City could not prohibit the use of a loudspeaker in the manner provided in the ordinance. This was the question and therefore the decision does not ap-

pear to be relevant to the particular controversy of the case now before this Honorable Court. It is respectfully submitted, however, that this case seems to be questionable because of the decision in *Kovacs* v. *Cooper,* 336 U.S. 77. In said *Kovacs* case there was an ordinance which prohibited the use of "loudspeakers" on the streets and public places of Trenton, New Jersey, and the Honorable Supreme Court upheld said ordinance. Mr. Justice Frankfurter and Mr. Justice Jackson, who had dissented in the *Saia* case, concurred in this decision and the former said it would be "to start with an unreality" to rest the *Kovacs* decision on the *Saia* case. Mr. Justice Jackson said that the *Kovacs* decision repudiated *Saia.*

Hague v. *Committee for Industrial Organization,* 307 U.S. 496, stated that a license was required for public assemblage, administered by a local official who could refuse a permit if in *his opinion* (emphasis ours) the refusal would prevent "riots, disturbances or disorderly assemblage."

Commonwealth v. *Gilfedder,* 321 Mass. 335, states that a permit from certain designated public officials was necessary and the granting or withholding of such a permit was in the uncontrolled discretion of these officials. (It should be noted that the Court did not expressly overrule *Commonwealth* v. *Davis,* hereinafter to be cited.)

Largent v. *Texas,* 318 U.S. 418, states that the dissemination of ideas depended upon approval by an official (the Mayor) issuing a permit if *he* (emphasis ours) "deems it proper or advisable."

Murdock v. *Pennsylvania,* 319 U.S. 105, requires religious colporteurs to pay a license tax "*as a condition to* the pursuit of their activities" (emphasis ours).

Niemotko v. *Maryland,* 340 U.S. 268: In this case the appellants were two members of Jehovah's Witnesses. By

invitation they scheduled Bible talks in the public park. There was *no ordinance prohibiting or regulating* (emphasis ours) the use of the park in question; it was the custom for organizations and individuals desiring to use it for meetings and celebrations to obtain a permit from the park commissioner. Permission was requested and refused. A meeting was nevertheless held, and the appellant was arrested and brought to trial on a charge of disorderly conduct. The Court stated that the conviction could not stand, as there was no evidence of disorder, threats or violence apparent; that the disorderly conduct must have been based on the fact that the appellants were using the park without a permit, *although* there was *no statute or ordinance prohibiting or regulating* the use of the park without a permit. It is true in this case that the Supreme Court has definitely included public parks, as well as highways, within the orbit of its decisions protecting the freedoms of the First Amendment from local abridgment or denial. It is true that the locus of the forbidden act was a public park, but there the similarity to the case before this Honorable Court ends. In the *Niemotko* case there was no ordinance of general application. It was, instead, an act of arbitrary discrimination by an administrative official.

Kunz v. *New York*, 340 U.S. 290:

> "Mr. Chief Justice Vinson delivered the opinion of the Court.
>
> "'New York City has adopted an ordinance which makes it unlawful to hold public worship meetings on the streets without first obtaining a permit from the city police commissioner. Appellant, Carl Jacob Kunz, was convicted and fined $10 for violating this ordinance by holding a religious meeting without a permit. . . .

"Appellant is an ordained Baptist minister who speaks under the auspices of the 'Outdoor Gospel Work,' of which he is the director. He has been preaching for about six years, and states that it is his conviction and duty to 'go out on the highways and byways and preach the word of God.' In 1946, he applied for and received a permit under the ordinance in question, there being no question that appellant comes within the classes of persons entitled to receive permits under the ordinance. This permit, like all others, was good only for the calendar year in which issued. In November, 1946, his permit was revoked after a hearing by the police commissioner. The revocation was based on evidence that he had ridiculed and denounced other religious beliefs in his meetings.

"Although the penalties of the ordinance apply to anyone who 'ridicules and denounces other religious beliefs,' the ordinance does not specify this as a ground for permit revocation. Indeed, there is no mention in the ordinance of any power of revocation. However, appellant did not seek judicial or administrative review of the revocation proceedings, and any question as to the propriety of the revocation is not before us in this case. In any event, the revocation affected appellant's rights to speak in 1946 only. Appellant applied for another permit in 1947, and again in 1948, but was notified each time that his application was 'disapproved,' with no reason for the disapproval being given. On September 11, 1948, appellant was arrested for speaking at Columbus Circle in New York City without a permit. It is from the conviction which resulted that this appeal has been taken.

"Appellant's conviction was thus based upon his failure to possess a permit for 1948."

The Court stated at page 293:

> "It is noteworthy that there is no mention in the ordinance of reasons for which such a permit application can be refused. This interpretation allows the police commissioner, an administrative official, to exercise discretion in denying subsequent permit applications on the basis of his interpretation, at that time, of what is deemed to be conduct condemned by the ordinance. We have here, then, an ordinance which gives an administrative official discretionary power to control in advance the right of citizens to speak on religious matters on the streets of New York. As such, the ordinance is clearly invalid as a prior restraint on the exercise of First Amendment rights."

The State of Rhode Island has taken upon itself to analyze the foregoing cases for the purpose of stressing that in each there is a licensing system which vests in an administrative official discretion to grant or withhold a permit upon "broad criteria unrelated to proper regulation of public places."

In no instance, it is respectfully submitted, does the United States Supreme Court restrict the power of the several States *in the regulation* of public streets and other public places.

It is stressed to this Honorable Court that there is a distinction between an outright prohibition or exercise of discretion and *the right to regulate.*

As shown in the *Niemotko* case, cited above, "The conclusion is inescapable that the use of the park was denied because of the City Council's dislike for a disagreement with the Witnesses or their views" (p. 272).

There was a lack of standards in the issuing of the licenses and the action was completely arbitrary. This is entirely different from the case at bar.

Cox v. *New Hampshire*, 312 U.S. 569, states:

"Appellants are five 'Jehovah's Witnesses' who, with sixty-three others of the same persuasion, were convicted in the municipal court of Manchester, New Hampshire, for violation of a state statute prohibiting a 'parade or procession' upon a public street without a special license.

. . . . . .

"The statutory prohibition is as follows (New Hampshire, P. L., Chap. 145, § 2):

" 'No theatrical or dramatic representation shall be performed or exhibited, and no parade or procession upon any public street or way, and no open-air public meeting upon any ground abutting thereon, shall be permitted, unless a special license therefor shall first be obtained from the selectmen of the town, or from a licensing committee for cities hereinafter provided for.'

. . . . . .

"Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. . . . *Lovell* v. *Griffin*, 303 U. S. 444, 451; *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, 515, 516; *Schneider* v. *State*, 308 U. S. 147, 160; *Cantwell* v. *Connecticut*, 310 U. S. 296, 306, 307."

133 American Law Reports, 1404:

". . . civil authority can never concede the extreme claim that police regulations of general application not directed against any sect or creed, however, widely the regulations may be accepted as being reasonable and proper, are constitutionally unapplicable to persons who sincerely believe the observance of such regulations to be 'an insult to Almighty God'."

Schneider v. *State* (*Town of Irvington*), 308 U.S. 147, 160:

"Municipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for movement of people and property, . . . it may lawfully regulate the conduct of those using the streets. . . . . Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion."

Commonwealth v. *Hessler* (1940), 141 Pa. Super. 421.
Manchester v. *Leiby*, 117 F. 2d 661.
State v. *White*, 64 N.H. 48.

An examination of the ordinance discloses that it is an ordinance providing rules and regulations for public parks in the City of Pawtucket. The prohibition therein is not directed at any particular religious group, but is general and applies without question to all such groups and to all political groups as well. The ordinance as a whole represents an exercise of the power which the City Council has over the management and control of municipal

property. Apparently, in the exercise of that power the City Council decided that the City's parks would more certainly serve the purpose of their establishment as areas of rest and recreation if they were not allowed to become forums for either religious or political controversy. It is an ordinance of long standing as evidenced by its date of approval, April 17, 1916, and hence it antedates by many years the recent prominence of the Jehovah's Witnesses in federal litigation. It is a comprehensive ordinance containing fourteen separate sections, each section restricting individuals, and regulates activities which are otherwise legal. The particular section 11 which we are concerned with appears to prohibit only addresses to political and religious meetings. It specifically states that it does not prohibit political or religious clubs or societies from visiting the public parks in a body. It reiterates that no public address be made under the auspices of such a club or society.

Davis v. *Massachusetts,* 167 U.S. 43: (In citing this case the State calls the Court's attention to *Commonwealth* v. *Gilfedder,* 321 Mass. 335, where it may be argued that this overrules the said *Davis* case. This contention the State disputes.) In the *Davis* case it appeared that, pursuant to enabling legislation, the City of Boston adopted an ordinance prohibiting anyone from speaking, discharging fire arms, selling goods or maintaining any booth for public amusement on any of the public grounds of the City except under a permit from the Mayor. Davis spoke on Boston Common without a permit and without applying to the Mayor for one. He was charged with a violation of the ordinance and moved to quash the complaint, *inter alia,* on the ground that the ordinance abridged his privileges and immunities as a citizen of the United States and denied him due process of law because it was arbitrary and unreasonable. His contentions were overruled and he was con-

victed. The judgment was affirmed by the Supreme Court of Massachusetts and was subsequently confirmed in the United States Supreme Court in the opinion cited above. In this case Mr. Justice White, speaking for a unanimous Court, rejected the contention by Davis that the local law under which he was convicted was contrary to the Fourteenth Amendment to the Constitution of the United States, and said:

> "The Fourteenth Amendment to the Constitution of the United States does not destroy the power of the States to enact police regulations as to subjects within their control . . . , and does not have the effect of creating a particular and personal right in the citizen to use public property in defiance of the constitution and laws of the State. . . . The plaintiff in error cannot avail himself of the right granted by the State and yet obtain exemption from the lawful regulation to which this right on his part was subjected by law."

It appears that the facts in the *Davis* case are almost identical with the case before this Court. The fact that the Boston ordinance delegates arbitrary and discriminatory authority to the Mayor does not, by any means, make it less objectionable than the Pawtucket ordinance. On the contrary, the Pawtucket ordinance would seem to be more in keeping with the general pattern of the United States Constitution.

It is further respectfully submitted that *Hague* v. *Committee for Industrial Organization,* 307 U.S. 496, which is submitted by the defendant in support of his contention, not only fails to overrule *Davis* v. *Massachusetts,* but reconciles the decision in the *Hague* case that an ordinance in Jersey City was unconstitutional under which individuals were forbidden to hold meetings or assemblies, to distribute circulars, leaflets or handbills on the public streets

or to speak without permits in the public. In the *Hague* case the Court found that municipal authorities had granted permits to various persons, other than the C.I.O., to speak at meetings in the streets of the city. The Supreme Court, in comparing the ordinance in the *Hague* case with the ordinance in the *Davis* case, speaks as follows (p. 515):

> "The ordinance there in question [*Davis* case] apparently had a different purpose from that of the one here challenged, for it was not directed solely at the exercise of the right of speech and assembly, but was addressed as well to other activities, not in the nature of civil rights, which doubtless might be regulated or prohibited as respects their enjoyment in parks. In the instant case [*Hague* case] the ordinance deals only with the exercise of the right of assembly for the purpose of communicating views entertained by speakers, and is not a general measure to promote the public convenience in the use of the streets or parks."

The Court then goes on to say that the *Davis* case does not rule the facts in the *Hague* case and states as follows (p. 515):

> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens."

This particular declaration has been urged very forcibly by counsel for the defense. It is agreed that this principle

is clearly established. However, in the same paragraph the Court in the *Hague* case declares further as follows (pp. 515-516):

> "The privilege of a citizen of the United States to use the streets and parks for communication or views on national questions may be regulated in the interest of all; is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied."

It is respectfully submitted that the Pawtucket ordinance, merely because it prohibits an address to a religious or political group in a public park, does not transcend the realm of regulation. It does not absolutely prohibit such an address in the City of Pawtucket.

The Pawtucket ordinance appears to recognize the controversial nature of political and religious addresses and the State of Rhode Island feels it must recognize the fact that political and religious addresses are of a highly controversial nature. The State recognizes further that the expounding of one man's religious dogma or one man's partisan political philosophy over a loudspeaker system in a public park may be very offensive to other members of the public using the park. It may very well be that the City Fathers who drew this ordinance had that situation in mind. Counsel for the defense has urged that the prohibition of controversial subjects and even subjects liable to incite riots and disorder is unconstitutional and the authorities of a municipality are bound not only to allow these discourses but to afford suitable police protection to prevent any ensuing disorder. It is submitted that the

State of Rhode Island does not agree that the Supreme Court of the United States has ever put such an obligation upon any municipality. In the *Hague* case the Supreme Court of the United States cites a brief filed by the Committee on the Bill of Rights of the American Bar Association in which they, as *amici curiae*, say (p. 679):

> "It is natural that threats of trouble should often accompany meetings of controversial questions. But meetings may not be suppressed on that account. The practice under ordinary conditions in our large cities is for the authorities to arrange with the applicants to have the meeting held in a suitable place, and to have enough policemen on hand to quell apprehended disturbances."

The State contends that what is a suitable place apparently is recognized by the Supreme Court of the United States as a proper regulation. It is further contended that it is not necessary for the State to show that actual trouble existed. The threat was present and, as the defendant stated, he did not know whether there would be trouble or not (R. 36).

It would seem that the Supreme Court of the United States does not question the right of a municipality to insist that addresses on controversial subjects be held in such places as will afford it greater opportunity for adequate police protection.

The State of Rhode Island contends as a fact that the ordinance in question is a comprehensive regulatory ordinance, and if it restricts the defendant in activities, which are otherwise legal, for the benefit, comfort and convenience of other members of the public, it also restricts actions of other members of the public, otherwise legal, for the benefit of his or other people's comfort and conven-

ience. The State contends that the ordinance in question is a general measure intended to promote the public comfort and convenience in the use of the public parks; that it does not violate the First or the Fourteenth Amendments to the United States Constitution and is not contrary thereto.

In defendant's motion to dismiss he sets out that his rights are abridged under the Constitution of the State of Rhode Island. An examination of the State Constitution fails to disclose any greater restrictions on the police power or its municipalities under enabling legislation than the Federal. Because the State of Rhode Island was the first sovereignty to establish freedom of religion, the State calls the Court's attention to section 3 of the State Constitution, particularly the following words:

> "And that every man shall be free to worship God according to the dictates of his own conscience and profess and by argument to maintain his opinion in matters of religion; and that the same shall in no way diminish, enlarge or affect his civil capacity."

The State of Rhode Island contends that the ordinance in question does not prohibit or restrict the worship of God or the use of the public parks for that purpose. There is nothing in this ordinance which would prohibit religious services of any kind from being held in the public parks of the City. There is nothing in this ordinance which prohibits or restricts any individual from offering prayer or singing hymns or conducting a religious ritual in the public parks. It is only an address on such an occasion that is prohibited by this ordinance. It cannot be said that freedom of religion is violated in any degree by this ordinance.

It is noted that nothing has been entered in evidence to show that the address given by the appellant was part of a group prayer or worship.

To the contrary, the appellant admitted, in answer to question 22, page 29 of the transcript, that the crowd assembled "to hear this lecture." He further admits in answer to question 33, page 31 of the transcript, that he was "introduced as the speaker of the occasion." In answer to question 29, page 30 of the transcript, the appellant told of advertising passed out to people on the street to "tell them about this meeting, inviting them to come."

Therefore it is respectfully submitted that the appellant presented an address before a group of people who gathered for the purpose of being addressed and were not in attendance for the purpose of holding religious services. This address was not an integral part of a religious service or worship.

The only question before this Honorable Court is whether or not the ordinance was designed to interfere with freedom of speech. The State of Rhode Island respectfully contends there is no other question at issue in the case at bar and reiterates its stand that freedom of worship is not involved. There is nothing in this ordinance which prohibits religious worship or services of any kind from being held in the public parks of the City of Pawtucket. Under this ordinance any individual or group of individuals may go to the parks and offer prayer or conduct a religious ritual. In the case at bar there certainly is no religious ritual. The entire testimony, the entire procedure, is directed solely to this defendant's speech, this defendant's right, as a member of the public, to make that speech. "The question involves only the defendant's right, as a member of the public, to speak in a manner and under conditions which would violate the equal and correlative rights of

other members of the public to a reasonable use of the park for its dedicated purposes" (R. 7). The defendant's argument that a religious address may be permitted in a public park without contravening the concept of church and state is as stated by Mr. Justice Condon (R. 51). ". . . appears to be an act of supererogation." Should this Honorable Court feel compelled to consider this point, it is then respectfully submitted that *Illinois, ex rel McCollum,* v. *Board of Education,* 333 U.S. 203, did deny the use of a public school, tax-supported property, for a period of religious instructions.

Conclusion.

The State of Rhode Island firmly believes that freedom of speech must be vigilantly guarded. As stated by Mr. Justice Condon of the Rhode Island Supreme Court in the opinion rendered relative to the certified questions hereinbefore referred to:

> "Insidious no less than open assaults upon them must be sternly resisted if they are not to be lost by erosion. But we are also aware that true liberty of any kind cannot exist without public order. Preservation of the balance between liberty on the one hand and authority and order on the other has ever been a difficult task for the courts and no less difficult for those immediately charged with the duty of maintaining public order. It should be our constant concern while safeguarding the first not to go so far as to make unduly difficult or perhaps impossible the discharge of the other."

The ordinance is constitutional because, both on its face and as construed and applied, it does not abridge the rights

of freedom of assembly, freedom of speech and freedom of worship, as stated in the First and Fourteenth Amendments to the United States Constitution and sections 3, 10 and 21 of Article I of the Rhode Island Constitution. The ordinance in question is a general measure and promotes public comfort and convenience in the use of the park and is a regulation in the interest of all and not a prohibition of freedom of speech, assembly and worship.

Dated December, 1952.

Respectfully submitted,

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